

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MARK BURTON,)
)
Petitioner,)
)
v.) No. 4:07CV1868 DDN/JCH
)
PAT SMITH,)
)
Respondent.)

MEMORANDUM AND ORDER

This matter is before the Court on the petition of Mark Burton for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition is successive and shall be transferred to the United States Court of Appeals for the Eighth Circuit for review under 28 U.S.C. § 2244(b)(3)(A).

On February 2, 1994, petitioner was found guilty by a jury in the Circuit Court of the City of St. Louis of murder in the second degree and of armed criminal action. The court sentenced petitioner to concurrent sentences of life and thirty years imprisonment. In state court, petitioner directly appealed his conviction and sought post-conviction relief. See, e.g., State v. Burton, 939 S.W.2d 419 (Mo. Ct. App. 1996). Petitioner additionally challenged his 1994 convictions through the filing of his first federal habeas petition on December 1, 1997, and then through his later filing of an amended petition on February 4, 1998. Both petitions were denied

by the instant Court on March 6, 2001. See Case No. 4:97CV2392 DDN (E.D. MO. March 6, 2001).

To the extent that petitioner seeks to bring new claims for habeas relief, petitioner must obtain leave from the United States Court of Appeals for the Eighth Circuit before he can bring those claims in this Court. 28 U.S.C. § 2244(b)(3)(A). Because petitioner did not obtain permission from the Eighth Circuit Court of Appeals to maintain the instant § 2254 application in this Court, the Court lacks authority to grant petitioner the relief he seeks. Rather than dismiss this action, the Court will transfer the petition to the United States Court of Appeals for the Eighth Circuit pursuant to 28 U.S.C. § 1631. See In re Sims, 111 F.3d 45, 47 (6th Cir. 1997); Coleman v. United States, 106 F.3d 339 (10th Cir. 1997); Liriano v. United States, 95 F.3d 119, 122-23 (2nd Cir. 1996).

Accordingly,

IT IS HEREBY ORDERED that petitioner's application for writ of habeas corpus is **DENIED** without prejudice because the instant petition is successive under 28 U.S.C. § 2244(b)(3)(A).

IT IS FURTHER ORDERED that no order to show cause shall issue as to respondent.

IT IS FURTHER ORDERED that the Clerk shall **TRANSFER** the instant petition to the United States Court of Appeals for the Eighth Circuit pursuant to 28 U.S.C. §1631.

Dated this 27th Day of November, 2007.

/s/ Jean C. Hamilton
JEAN C. HAMILTON
UNITED STATES DISTRICT JUDGE